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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

FJL-MVP, LLC, a California limited
liability company,

Plaintiff,

v.

STAPLES THE OFFICE
SUPERSTORE, LLC, a Delaware
limited liability company; PETSMART,
INC., a Delaware corporation; and
DOES 1 through 25, inclusive,

Defendants.

Case No. ED-CV10-00449 CAS
(FFMx)

Hon. Fredrick F. Mumm, Courtroom
929

**[PROPOSED] PROTECTIVE
ORDER**

**NOTE CHANGES MADE BY
COURT**

AND RELATED COUNTERCLAIMS

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ORDER

The Court hereby grants the parties' request that discovery in this action be conducted under a protective order pursuant to Federal Rule of Civil Procedure 26(c). The documents, tangible things and information, subject to discovery or otherwise submitted to the Court in this action shall be done so according to the terms of the parties' Stipulation for Entry of Protective Order, which was submitted on March 2, 2011. The terms of the parties' Stipulation for Entry of Protective are as follows:

It appearing that discovery in this action will likely involve disclosure of trade secrets and other confidential commercial information, the parties in this action, by and through their undersigned attorneys, having agreed that it would serve their collective interests and the interests of nonparties if discovery were conducted in this action under a protective order pursuant to Federal Rule of Civil Procedure 26(c); and relying on the terms of this Stipulation and Protective Order in responding to discovery,

IT IS HEREBY STIPULATED AND AGREED THAT:

1. This Stipulation and Protective Order shall apply to all documents, tangible things, and information, subject to discovery or otherwise submitted to the Court in this action, that a party or nonparty (a) owns or, under an agreement of confidentiality or a protective order in other litigation, controls or possesses and (b) in good faith believes are, or reveal, trade secrets or other confidential commercial information, including, without limitation, documents or tangible things produced, information obtained from an inspection of premises or tangible things, answers to interrogatories or requests for admission, testimony adduced at depositions upon oral examination or written questions, designated hereunder as

1 “CONFIDENTIAL” or “CONFIDENTIAL - ATTORNEY ONLY.” The term
2 “CONFIDENTIAL MATERIALS” shall include all the foregoing items or
3 any portion thereof and all documents, tangible things and information derived
4 therefrom, including, without limitation, copies, summaries, or abstracts thereof.

5 2. All documents and tangible things produced by one party to another
6 in this litigation shall bear identifying numbers. A party or nonparty producing
7 documents, tangible things, or information in response to a discovery request
8 (each, a “Producing Party”) shall label or mark each document, tangible thing,
9 interrogatory response, response to requests for admissions, or any discovery
10 response that it deems to be CONFIDENTIAL MATERIALS with the legend
11 “CONFIDENTIAL” or “CONFIDENTIAL - ATTORNEYS ONLY” on the face
12 thereof at the time of production or copying. The designation of any document,
13 tangible thing, or information as CONFIDENTIAL or CONFIDENTIAL -
14 ATTORNEYS ONLY shall be a representation that the Producing Party or the
15 Producing Parties’ counsel, in good faith, believes that the item so designated
16 comprises or contains CONFIDENTIAL MATERIALS as that term is defined
17 herein.

18 3. For depositions upon oral examination, the witness or counsel
19 for any party may designate testimony of the witness, or any part thereof, as
20 CONFIDENTIAL or CONFIDENTIAL - ATTORNEYS ONLY. The court
21 reporter shall affix the appropriate confidentiality label for each transcript that is
22 so designated.

23 4. CONFIDENTIAL MATERIALS shall be used solely for litigation
24 between the parties and shall not be used or disclosed for any other purpose,
25 including, but not limited to, use in any business or commercial enterprise;
26 however, nothing herein shall prohibit or otherwise restrict a party or nonparty’s
27 use or disclosure of its own CONFIDENTIAL MATERIALS.

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5. Access to CONFIDENTIAL MATERIALS shall be limited to the following unless and until this Court rules that there may be further disclosure.

(a) Counsel of record for the parties or their affiliates, subsidiaries, or direct or indirect parents; attorneys regularly employed in the legal departments of the parties or their affiliates, subsidiaries, or direct or indirect parents; contract attorneys hired to assist with this matter; and employees in the law firms or legal departments of such counsel whose functions require access to CONFIDENTIAL MATERIALS;

(b) employees, directors, members or major shareholders of the parties or their respective affiliates, subsidiaries, or direct or indirect parents in addition to those specified in subparagraph 5(a);

(c) any author, sender, addressee, or copy recipient of such CONFIDENTIAL MATERIALS and any officer, employee, or agent of the Producing Party:

(d) experts or independent consultants engaged by counsel or the parties to assist in this litigation, provided that each nonparty expert and/or independent consultant has the need to learn the content of such **CONFIDENTIAL MATERIALS**, as determined by the sole discretion of the respective party employing such expert and/or independent consultant, and has signed an undertaking in the form of Exhibit A annexed hereto before being provided with discovery materials protected by this Stipulation and Protective Order;

(e) any other person as to whom the parties first agree in writing and who signs an undertaking in the form of Exhibit A annexed hereto before being provided with discovery materials protected by this Stipulation and Protective Order; and

(f) the Court, persons employed by the Court, and stenographers transcribing the testimony or argument at a hearing, trial or deposition in this action or any appeal therefrom.

These restrictions and requirements may be altered or supplemented only by written stipulation between the parties filed with and approved by the Court or by order of the Court on a duly noticed motion.

6. The parties recognize that certain limited categories of information may be subject to confidentiality agreements or other obligations to nonparties or are otherwise sufficiently sensitive or confidential such that one or more party's officers, employees and agents should not have access to them. In such instances, the information may be designated "CONFIDENTIAL - ATTORNEYS ONLY" in the same manner in which CONFIDENTIAL designations are made, and persons specified in subparagraph (b) of paragraph 5 above shall not have access to materials designated as CONFIDENTIAL - ATTORNEYS ONLY unless and until the Court rules otherwise.

7. Nothing in this Stipulation and Protective Order shall bar or otherwise restrict any party's counsel from rendering advice to his client with respect to this action, and, in the course thereof, from relying in a general way upon his examination of CONFIDENTIAL MATERIALS, provided, however, that in rendering such advice, and in otherwise communicating with her or his client, said counsel shall not disclose the contents of any CONFIDENTIAL MATERIALS to anyone who is not authorized to receive any such disclosure under the terms of this Stipulation and Protective Order.

8. This Stipulation and Protective Order binds each party to honor CONFIDENTIAL and CONFIDENTIAL - ATTORNEYS ONLY designations pursuant to the terms herein. If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed CONFIDENTIAL MATERIAL to any person or in any circumstance not authorized under this Stipulation and Protective Order, the

1 Receiving Party must immediately (a) notify in writing the Producing Party of the
 2 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the
 3 CONFIDENTIAL MATERIAL, (c) inform the person or persons to whom
 4 unauthorized disclosures were made of all the terms of this Stipulation and
 5 Protective Order, and (d) request such person or persons to execute the
 6 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit
 7 A.

8 9. In the event a party is served with legal process in another
 9 proceeding seeking production of CONFIDENTIAL MATERIALS it obtained
 10 through discovery and protected under the terms of this Stipulation Protective
 11 Order, that party shall promptly notify the designating party or non-party whose
 12 material is sought of the service of legal process, as well as provide the
 13 designating party or non-party a copy of the legal process. The party that was
 14 served the legal process shall afford the designating party or non-party a
 15 minimum of twenty (20) days to object thereto or to intervene in such other
 16 proceeding for the purpose of seeking a protective order to prevent or limit the
 17 disclosure not produce any CONFIDENTIAL MATERIALS responsive to
 18 the subpoena prior to the due date specified in the subpoena. (FFM)
 19 Notwithstanding any other provision of this Stipulation and Protective Order,
 20 nothing herein shall be construed to improperly limit the rights of third parties
 21 involved in other actions to conduct discovery, or to limit the subpoena power of
 22 another court, absent motion for a protective order in such other proceedings.

23 10. The parties acknowledge that the Court has not authorized in
 24 advance the filing of any document under seal. Pursuant to Local Rule 79-5.1 of
 25 this Court, if any papers to be filed with the Court contain CONFIDENTIAL
 26 MATERIALS, the proposed filing shall be accompanied by an application to file
 27 the papers, or the portion thereof containing the CONFIDENTIAL MATERIALS,
 28 under seal. Any such application shall be directed to the judge to whom the

1 papers are directed. If a party wants to file with the Court a document containing
2 CONFIDENTIAL MATERIALS, the document will be filed under seal with
3 the Clerk of the Court in an envelope prominently marked with the caption of
4 the case and the following notice:

5 **CONFIDENTIAL - UNDER SEAL - SUBJECT TO PROTECTIVE ORDER**

6 This envelope contains material filed/lodged under seal. It shall not be
7 opened by any person other than the Court except by Court Order or by
8 written stipulation of all parties filed with the Clerk of this Court, and is
9 otherwise subject to the provisions of the Protective Order entered in this
10 action on [date].

11 The Clerk of the Court is directed to maintain the confidentiality of any
12 materials filed under seal in accordance with the above instructions; and all such
13 materials shall be kept under seal until further order of the Court.

14 11. An inadvertent failure to designate qualified information or items as
15 “CONFIDENTIAL” or “CONFIDENTIAL - ATTORNEYS ONLY” does not
16 waive the Designating Party’s right to secure protection under this Stipulated
17 Protective Order for such material. In the event that any document or thing
18 qualifying for designation as “CONFIDENTIAL” or “CONFIDENTIAL -
19 ATTORNEYS ONLY” is inadvertently produced without the proper designation,
20 the Producing Party shall identify such document or thing promptly in writing
21 after its inadvertent production is discovered and provide a copy of such
22 document or thing with the proper designation to counsel for the party that
23 received the misdesignated copy(ies) (“Receiving Party”), upon receipt of which
24 the Receiving Party shall promptly return or verify in writing that it has taken
25 reasonable efforts to destroy all copies of the document or thing in its previously
26 undesignated or misdesignated form. To the extent that this applies to a transcript
27 of a deposition, the Designating Party shall request that the court report issue new
28 versions of the transcripts that affix the appropriate confidentiality label.

1 12. A party's entry into this stipulation or acceptance of documents,
2 tangible things, or information designated as CONFIDENTIAL or
3 CONFIDENTIAL - ATTORNEYS ONLY shall not be an admission or
4 concession by such party, permit any inference, or create a presumption that any
5 such designation is merited or appropriate and shall be given no weight in any
6 challenge to any confidentiality designation hereunder or to any assertion of the
7 need for a protective order under Federal Rule of Civil Procedure 26(c). At any
8 time after the receipt of any CONFIDENTIAL MATERIALS, any party (a
9 "challenging party") may challenge a CONFIDENTIAL or CONFIDENTIAL -
10 ATTORNEYS ONLY designation made by any other party (a "designating
11 party"). To effect the challenge, a challenging party must specify in writing to the
12 designating party the materials believed to be improperly designated. If, after
13 conferring in good faith with the designating party, a dispute remains as to any
14 materials, the challenging party may move the Court for an order that the
15 designated materials shall be entitled to no protection or a lesser protection than
16 that designated under this order; provided, however, that the challenging party
17 shall honor a challenged designation until such time as the Court may order
18 otherwise.

19 13. The parties will engage in discovery in reliance on the terms of this
20 Stipulation and Protective Order. Subject to the foregoing, agreement to this
21 Stipulation and Protective Order shall not prevent or prejudice any party from
22 applying to the Court for relief therefrom, or from applying to the Court for
23 further or additional protective orders, or from agreeing with the other parties to
24 a modification of this Stipulation and Protective Order, subject to the approval of
25 this Court. **Any such motion must comply with Local Rule 37. (FFM)**

26 14. This Stipulation and Protective Order shall not be construed as an
27 agreement by any person to produce or supply any document, tangible thing, or
28 information, or as a waiver by any person of his right to object to the production

1 of any document, tangible thing, or information, or as a waiver of any claim of
2 privilege with regard to the production of any document, tangible thing, or
3 information.

4 15. Within thirty (30) days after final termination of this action,
5 including all appeals, each party shall either (a) return all confidential material to
6 the producing party (including any copies, extracts or summaries thereof or
7 documents containing information taken therefrom, but excluding any materials
8 which in the judgment of counsel reflect the work product of the recipient) or (b)
9 destroy all such material and deliver to the producing party an affidavit indicating
10 that such destruction of material has occurred.

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IT IS SO ORDERED.

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14 | Dated: March 11, 2011

/S/ FREDERICK F. MUMM
HON. FREDRICK F. MUMM
United States Magistrate Judge

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